DOCKET NO.: HHD-CV-18-6088970-S	:	SUPERIOR COURT
	:	
MARK DEAN, TRUSTEE OF THE CT RE 2019 TRUST	:	JUDICIAL DISTRICT OF HARTFORD
	:	
V.	:	AT HARTFORD
	:	
FORE GROUP, INC. and FOTIS DULOS	:	

DOCKET NO.: HHD-CV-18-6088971-S	:	SUPERIOR COURT
	:	
MARK DEAN, TRUSTEE OF THE CT RE 2019 TRUST	:	JUDICIAL DISTRICT OF HARTFORD
	:	
V.	:	AT HARTFORD
	:	
FOTIS DULOS	:	DECEMBER 19, 2019

DEFENDANTS' POST-TRIAL BRIEF

The Defendants, Fore Group, Inc. ("Fore Group") and Fotis Dulos ("Dulos") (hereinafter collectively referred to as "Defendants"), through their undersigned counsel, hereby submit this post-trial brief.

I. PROCEDURAL SUMMARY

The Court consolidated the above-captioned matters for a single trial. The matters are captioned *Dean v. Fore Group, Inc.*, HHD-CV18-6088970-S ("Matter 970"), and *Dean v. Dulos*, HHD-CV18-6088971-S ("Matter 971").[1] Both matters were commenced on the same date – January 26, 2018 (*see Matter 970,* Doc. 100.32 & *Matter 971, Doc.* 100.32) – and the trial of both matters commenced on December 3, 2019 and concluded on December 4, 2019.

The claims asserted in Matter 970, as presently pled, are for breach of contract (Count One), unjust enrichment (Count Two), piercing of the corporate veil (Count Three) and

[1] The Court's docket still reflects the original plaintiff, Gloria Farber, as executor [sic] of the estate of Hilliard Farber, even though there was a substitution of the plaintiff.

constructive trust (Count Four).[2] All four counts require that the plaintiff prove each element by a preponderance of the evidence. *See Freeman v. Alamo Management Co.,* 221 Conn. 674, 678, 607 A.2d 370 (1992); *see also Patel v. Patel,* Superior Court, judicial district of New Haven, Docket No. CV-12-6034651-S (August 26, 2016, Lager, J.) (burden of proof for unjust enrichment is preponderance of evidence standard). As is set forth below, the plaintiff, Mark Dean, Trustee of the CT RE 2019 Trust ("Plaintiff"), has not proven his claims under the required standard of proof.

II. MATERIAL FACTS

A. Matter 970

1) History of Fore Group

In 2004 Fotis Dulos founded Fore Group to construct high-end homes, predominantly in the State of Connecticut: "Fore Group was founded in 2004 primarily to construct high-end residential properties." *12/3/19 Tr*., pg. 82: 24-25. Over time, Fore Group enjoyed success and recognition. It completed approximately 45 projects, earned 32 HOBI (Home Builders Industry) Awards, and Dulos was voted by HBRA (Home Builders & Remodelers Association) of Central Connecticut as Builder of the Year for 2015.

> We have built about 45 homes. Some of them have been either smaller projects or renovations . . . We have received 32 home industry awards for excellence and we have also received the 2015 Builder of the Year award.

[2] The plaintiff sought multiple amendments of the claims throughout this litigation. The most recent amendment sought was 11/22/2019 (just 11 days prior to trial) by way of motion to amend the complaint in Matter 970. Although Defendants responded to the prior amendment, they have also responded simultaneously herewith to the Fourth Amended Complaint (Doc. 260.00), which has removed the constructive trust claim (Count Four). The prior pleadings filed by the plaintiff and the allegations contained therein are admissions by the plaintiff. *See Dreier v. Upjohn Co.,* 196 Conn. 242, 244, 492 A.2d 164 (1985) ("As a general rule statements in withdrawn or superseded pleadings, including complaints, may be considered as evidential admissions [of] the party making them, just as would any extrajudicial statements of the same import."). The defendants ask that the Court take judicial notice of the statements made in paragraph 8 of the *Third Amended Complaint – By Consent*, dated September 11, 2019, in Matter 970. *See* Doc. 205.00. There, the plaintiff clearly admits: "Upon resales of the properties, the defendant Fore Group repaid decedent [Hilliard Farber] funds that decedent had loaned defendant, Fore Group." As discussed below, that admission is very important.

12/3/19 Tr., pg. 83: 2-3, 6-8.

In 2016 Fore Group reached sales of $9,338,377. *Ex.* 17. The predecessor-in-interest to the plaintiff, Hilliard Farber ("Farber"), encouraged Dulos to form Fore Group and provided advice and counsel. Farber also provided funds when funds were needed. Dulos described their relationship as excellent, based on trust and mutual respect. Dulos testified that Farber was like a second father to him:

> He and I had a very, very good relationship. He was like a second father to me. He was the one that prompted me to leave my work at Capgemini Ernst & Young in New York City and to start my own business. He was incredibly supportive. He provided advice. He provided capital over the years. And he was always there for me and the business. He really believed in the business and he thought it was a big success and a big plus for our family and our children.

12/3/19, Tr., pg. 83: 14-18. Dulos testified that he and Farber trusted each other such that, on one occasion, Dulos gave Farber a blank check for Farber to fill in with a six figure amount. *Ex. G,* pg. 4 (check #2052, $300,000). Dulos did so, "[b]ecause [he] trusted him completely." *12/3/19 Tr.,* pg. 166: 10.

> Mr. Farber was a very smart, intelligent person, a very kind person, and he treated me like a son and I treated him like a father. Fore Group would not have been what it is without him. I owe a lot to him. And that's the type of relationship we had. If I had excess funds I would not hesitate to give him a blank check and tell him a day or two later this is the amount that you can draw.

12/3/19 Tr., pg. 166: 14-20.

2) Relationship Between Defendants and Farber from 2004 to 2010

From 2004 to 2010, Farber loaned Fore Group funds to assist with specific construction projects, and these financial transactions were formal in nature; *i.e.* promissory notes were executed by Dulos in his capacity as President of Fore Group, and commercially reasonable interest was paid to Farber by Fore Group:

> The first years, from I believe 2004 to 2007 and '8 there were formal promissory notes. There was an interest rate and these notes were on the premise that when projects were completed the money would be returned to Mr. Farber.

12/3/19 Tr., pg. 84: 5-9. The following is a summary of interest payments by Fore Group to Farber from 2005 to 2010:

> 2005 - $26,900.00
> 2006 - $50,928.00
> 2007 - $137,065.00
> 2008 - $89,977.00
> 2009 - $34,066.00
> 2010 - $33,156.00

Ex. 25, pg. 17.

Based on promissory notes, which were not introduced into evidence and no longer exist, loans were payable upon the completion of a specific project:

> Q: So to the extent that there were loan agreements between you and Mr. Farber, those were payable upon the completion of a particular project?
> A: [Dulos]*:* Yes, that's correct.

12/3/19 Tr., pg. 84: 10-19.

3) Relationship Between Defendants and Farber from 2011 to 2016

The business relationship between Farber and Fore Group changed towards the end of 2010 after Dulos' wife, Jennifer (Farber's daughter), gave birth to the couple's fifth child, Cleopatra Noelle at a Hospital in New York City:

> Q: Okay. Did the relationship that you had with Mr. Farber change after that point?
> A [Dulos]: It did. It changed around 2010 after the birth of my fifth child, Clara Noel.*

12/3/19 Tr., pg. 100: 15-16. During the birth, Dulos and Farber were at the delivery room with Jennifer and the staff. Before and after the delivery Farber and Dulos talked about their lives and what their plans were for the future. Farber recognized that Dulos, through Fore Group, had created not only a success story, but also a positive cash flow for Jennifer and his grandchildren.

Farber told Dulos that Fore Group was an important asset for the future and that he wanted to continue to be supportive of Dulos and the business, but not as a formal business relationship as in the past, but rather as a family relationship moving forward. Dulos thanked Farber for believing in him, helping Fore Group with access to capital and always being there for him, Jennifer and the children. Farber told Dulos that he considered him to be like a son to him. Farber informed Dulos that if any funds were due to him by Fore Group at that time were to be forgiven upon his death and that all funds advanced to Fore Group thereafter were not going to be loans with interest. Instead, they were funds that were being provided out of love and support to Dulos, his wife and their family of five children, so Fore Group could continue supporting the family:

> We were together with Mr. Farber at the delivery room and he expressed his pleasure of how Fore Group was performing, he expressed his support, and he said to me that in the future any of these advances are not going to be considered loans, I don't want any interest and when you have excess funds you can return them to me. If you have more funds than I have loaned you, you can also send me that and I'll invest them in the stock market, but when you need the funds to expand the business, you keep the funds.

12/3/19 Tr., pg. 100: 16-25.

As funds were needed to keep Fore Group growing, Farber advanced those funds. In line with that conversation in late 2010, thereafter, there were no promissory notes, and Farber made the advances with no expectation of repayment. When funds were not utilized for construction projects, Fore Group transferred excess funds to Farber. Money flowed both ways:

> Q: So there were no specific loan agreements after 2010. Correct?
> A [Dulos]: No, no specific agreements.
> Q: And do you know -- so since there were no agreements, there were no verbal agreements either. Correct?
> A: That was our understanding that they were being treated as advances going from him to me, to Fore Group that is, and then from Fore Group to him when the funds were not needed.
>
> * * *
>
> Q: So the money flowed both ways.
> A: Yes.

12/3/19 Tr., pg. 100: 26-27, 101: 1-7 & 101: 14-15. Capital by Farber to Fore Group was not identified as loans on financial statements provided to banks thereafter. Neither Farber nor Defendants considered them to be loans, because there was no legal obligation to repay.

For example, the 11/18/2017 PFS for Savings Bank of Danbury (*Ex*. 35) does not include any loans to Farber. Under Schedule 8 - Loans Owing Banks, Brokers, Finance Companies And Others (*Ex.* 35, pg. 4) there is no mention of any loan owed to Farber. However, there is mention of the $500,000 promissory note to Ioannis Toutziaridis. *Ex. 35*, pg. 4, Schedule 8. Accordingly, in the Summary page, the only Unsecured Loans from Schedule 8 is the $500,000 owed to Ioannis Toutziaridis. *Ex. 35,* pg. 2*, Liabilities, Unsecured Loans from Schedule 8.*

Indeed, Joseph Urbanski, the Accountant for Fore Group until 2017 testified, he never saw any notes or other loan documentation:

> Q And with respect particularly to the loans that were listed in those returns, each of those returns, you didn't have any other documents evidencing those loans. Correct?
> A [Urbanski] That's correct.
> Q And you actually never saw a promissory note that reflected or evidenced the existence of those loans. Correct?
> A I don't recall ever seeing a note, that's correct.

12/3/19 Tr. at 26:17-24 Also, Urbanski testified that in his conversations with Farber, Farber never mentioned "loans".

> Q And you never spoke with Mr. Hilliard Farber. Correct?
> A [Urbanski]: Oh, I have spoken with Hilliard.
> Q Okay. Did you speak with him particularly -- you never spoke with him about the loans that are listed on these tax returns. Correct?
> A I don't recall a specific conversation.
> Q So to your recollection Mr. Farber never confirmed the amounts that are listed on the tax returns. Correct?
> A I have no recollection of a conversation –

12/3/19 Tr., pg. 29: 23-27 & 30: 1-5. Fore Group did not pay interest in 2012. In 2011, and from 2013 to 2016, upon Urbanski's recommendation, Fore Group only paid minimal interest, even

though it was not obligated by Farber to do so, as follows:

> 2011 - $15,000
> 2012 – no interest
> 2013 - $7,125.00
> 2014 - $7,562.00
> 2015 - $5,877.00
> 2016 - $5,444.00

Ex. 25, pg. 17. Farber and Dulos were family. There was no thought on either side about notes, security, mortgages or other formalities.

4) Reclassification of Family Funds (Long Term Liability to Paid in Capital)

Farber died on January 8, 2017. During 2017, Dulos realized that the Family Funds, Long Term Liabilities account, shown on the 2016 Tax Return as a liability of $1,740,000, overstated the amount due to Farber:

> I was aware of it in 2017 because I knew there was no money owed to Mr. Farber; in my mind it was the other way around. But I didn't go through all the accounting and the details until this litigation started.

12/4/19 Tr., pg. 4*2:*4-7. As a result, Dulos made an adjusting entry, moving the balance to Additional Paid In Capital. This journal entry did not affect the Balance Sheet or the Income Statement:

> In 2017 I knew that the liability of the family funds was overstated. I didn't know exactly what the reason was so I made an adjusting journal entry and I moved it from liabilities to owner's equity capital, which is on the same side of the balance sheet; they're both on the right side. So it doesn't affect the balance sheet and it doesn't affect the P&L. So that's -- I thought that was the best I could do at that point until I figure it out, because that was more accurate than the way it was shown.

12/4/19 Tr., pg 42: 16-24.

Joseph Urbanski, Fore Group's accountant at the time, had already notified Dulos as of May of 2018, that 2018 would be his last year with Fore Group, for personal reasons, and encouraged Dulos to find and engage a new accountant. Urbanski prepared a tax return for the

Year Ending 2017. Dulos interviewed and hired Bart Giustina, Fore Group's current certified public accountant (CPA). Dulos discussed among other topics, the misclassification of the Family Funds and Giustina indicated that he had no issue with moving the balance of Family Funds from Liabilities to Equity in the business so as to more accurately reflect the classification. As a result, the 2017 Tax Return was prepared and filed by Giustina, and the Family Funds balance was moved to Fore Group Additional Paid-In Capital:

> Q: Okay. But to the extent that there was a misclassification is it your testimony that that was picked up by the accountants when they prepared your tax returns?
> A [Dulos]: Yes.

12/4/19 Tr., pg. 42: 25-27 & 43: 1. During 2018 and 2019 and as part of the discovery process in Matter 970, Dulos reviewed the history of the Family Funds account and provided the Plaintiff with an Excel Spreadsheet (part of *Ex.* 25) detailing the accounting of the balance of $1,740,000, which was shown on the 2016 Tax Return as a liability. During his review, Dulos discovered that the balance of the account was inaccurate because certain entries had not hit the Family Funds account detailed in Exhibit 25:

> And while the plaintiff and us we exchanged a lot of spreadsheets doing the calculations and going through all the records, the payments and the advances, it became clear to me when I looked at this that there were obviously entries missing and that's why that showed a million-seven-forty as a balance and that's what fed the tax return.

12/4/2019 Tr., pg.42: 7-13.

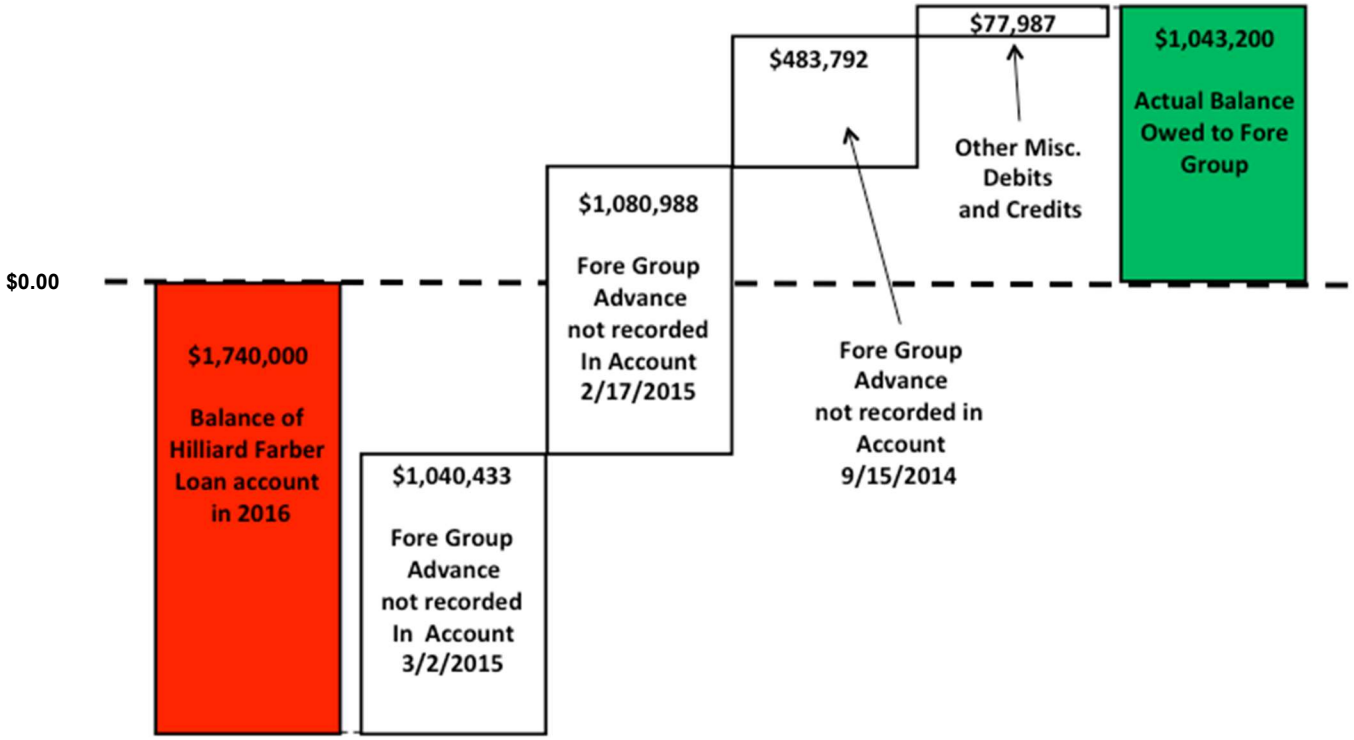
> A [Dulos]: That's the family funds account.
> Q Okay. Is that an accurate representation of the balance of that account?
> A No.
> Q Okay. Why not?
> A So just to start, the million-forty-four-thirty-three that is on Exhibit 6 towards the bottom on March 2, 2015, 1,040,433, that's missing. The one on February 17, 2015, for 1,680,988, that is partially in this family funds account is the 500,000 because there were two entries, one for a million-one-eighty, and one for 500,000. So the 500,000 hit this account but the million-one-eighty did not.
> Q Okay. And do you know why it didn't hit that account?

A It was misclassified.

12/4/2019 Tr., pg. 40: 17-21 & 41: 7-16. The following entries were not reflected in Fore Group's Family Funds account, set forth in the 2016 Tax Return balance of $1,740,000:

1. $1,040,433 (3/2/2015);
2. $1,180,988 (2/17/2015);
3. $483,792 (9/15/2014) (The above entries are documented in Plaintiff's Spreadsheet, *Ex.* 6 "Transfers and Deposits to/from Fore Group, LLC". They are found in the Credit column, which shows payments received from Fore Group. These advances by Fore Group to Hilliard Farber, were not recorded in the Family Funds account); and
4. Other misc. debits and credits total $77,987.

TABLE 1 – Reconciliation of Alleged Balance in Family Funds Account to Actual Balance Via Application of Misclassified Payments[3]



The total amount of funds not reflected in the Family Funds Account line item in Fore Group's balance sheet accounting was $2,783,200, which, when applied, creates a negative balance of

[3] Note: The dotted line represents $0.00 (zero dollars).

($1,043,200). In other words, not only is no money owed to Plaintiff, but there is also a balance of $1,043,200 owed to Fore Group. This is now the subject of a counterclaim in Matter 970.

Notably, Plaintiff's counsel moved the Court to strike Dulos' testimony as to why the Family Funds amount on the tax returns up to 2016 was incorrect. The Court ruled: *"The answer was correct – I'll overrule the objection – or overrule the motion to strike." 12/4/19 Tr.,* pg. *87:16-27; 88:1.* There is no testimony that controverts Dulos' testimony regarding the inclusion of the alleged loans in Fore Group's tax returns or the misclassification of the Family Funds.

5) Reconciliation of Transfers and Deposits between Fore Group and Hilliard Farber

Funds flowed both ways between Fore Group and Farber. When Fore Group needed funds for a construction project, Farber would provide the needed funds. When funds were not needed, Fore Group would advance excess funds to Farber and he would invest them in the Bond and Stock Markets as he saw fit.

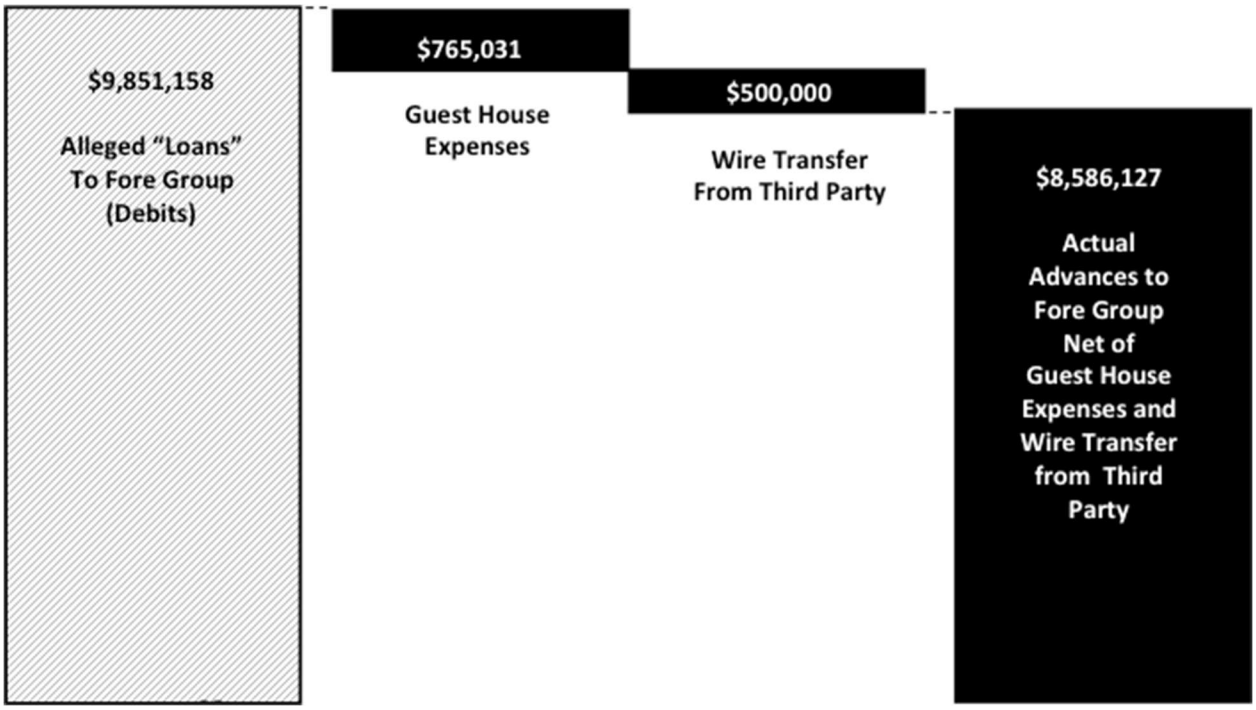
> A [Dulos] If I had excess funds I would not hesitate to give him {Farber} a blank check and tell him a day or two later this is the amount that you can draw.
> Q And why would you give Mr. Farber excess funds?
> A Because I'm not a finance guy. I'm not an investment banker; he was. And he could use the money in the stock market or in the bond market much better than I would. It would be better than sitting in my account doing nothing.
> Q So that's what you discussed earlier; the funds started to flow between the Fore Group and Mr. Farber without any formal agreements. Correct?
> A Funds were going both ways.
> Q And so when the Fore Group had extra money that it didn't need for operating expenses or construction it would send to him to invest. Correct?
> A Exactly.
> Q And to hold.
> A Yes.
> Q And he would send it back when the Fore Group needed it. Correct?
> A When we needed it he would always be there for us.

12/3/2019 Tr., pg. 166: 18-27 & 167: 1-11*; see also 12/3/19 Tr.,* pg. 100: 13-27 & 101: 1-15. Plaintiff's spreadsheet, "Transfers and Deposits to/from Fore Group, LLC", prepared by Rimma

Gulub and relied upon by the plaintiff (*Ex.* 6) attempts to set forth these transactions, but there are myriad errors.

The following table lists the aggregate errors made by Plaintiff on the debit side of the calculation of alleged loans made to Fore Group:

TABLE 2 Reconciliation of Advances to Fore Group (Debits)



The second column from the left portrays payments made by Farber for construction expenses on his guest house at Pound Ridge. These amounts have been incorrectly characterized and sought from Defendants as "loans". The total amount established at trial is $765,031, with the corresponding full exhibits, as follows:

#	Amount	Date / Period	Exhibit #
1	$ 19,563.66	October to November 2007	Exhibit S
2	$ 5,056.56	December 2007	Exhibit P
3	$ 12,034.42	March 2008	Exhibit O
4	$ 34,073.23	April 2008	Exhibit T
5	$ 29,763.39	April to June 2008	Exhibit Q
6	$ 63,695.01	July to August 2008	Exhibit R
7	$ 150,000.00	September to November 2008	Exhibit M
8	$ 49,955.41		
9	$ 80,098.33	December 2008	Exhibit L
10	$ 42,000.00	January to May 2009	Exhibit K
11	$ 84,898.00		
12	$ 93,344.59	June 2009	Exhibit J
13	$ 36,228.37	September to December 2009	Exhibit N
14	$ 50,316.39	July to August 2009	Exhibit U
15	$ 8,684.00	January to December 2011	Exhibit I
16	$ 5,320.00	April 2016	Exhibit H
	$ 765,031.36		

The above payments represent work performed by Fore Group for the Farbers for the construction of their Guest House at 45 Mallard Lake Road in Pound Ridge, NY. Fore Group promptly completed the Guest House and provided detailed documentation of the expenses on an ongoing basis. Some of the invoices were paid by checks in the exact amount and some invoices were trued up against the balance of the Family Funds account. The Guest House is an 1,800 square foot modern structure. The total amount of $765,031, which represents payments for construction expenses for the Guest House, is not a loan from Farber, it was payment for actual construction services provided by Fore Group and should be deducted from the list of transfers to Fore Group (debits). *See 12/3/2019 Tr.,* pg 101-152. Plaintiff never contested the testimony and documents proving the nature and amount of these amounts or that they were not loans.

Indeed, Plaintiff's counsel withdrew his objection to the evidence of the Guest House expenses *Tr. 12/3/19*, pg. 140: 16-17*: "*Atty. Weinstein: I withdraw the objection, your Honor, as to those as well. The Court: Allright. So then Exhibits, to be clear, N,O,P,Q,R and S are Full. . .

." Additionally, Plaintiff's counsel stated: "I withdraw any objection to the admissibility of O through T. Attorney Murray: Perfect." *12/3/19 Tr.*, pg. 143: 20-23. As a result, it is clear that all parties admit that the Guest House expenses were not loans, but instead payments for services rendered by Fore Group.

The third column from the left on Table 2 portrays a pass-through wire transfer from a third party as a "loan" in Plaintiff's accounting in Exhibit 6. As a result, this amount, $500,000, which represents the Ioannis Toutziaridis investment, is not a loan from Farber and should be deducted from the list of transfers to Fore Group ("Debits" on *Ex*. 6). In fact, on direct examination by his own counsel, Plaintiff conceded that that amount was not a loan from Farber to Fore Group. *12/3/2019 Tr.,* pg. 153: 1-27; *see also 12/3/19 Tr.*, pg. 154:13-14 ("Attorney Weinstein: We do not claim that $500,000.").

With respect to payments made by Fore Group to Mr. Farber ("Credits" on Ex. 6), there are payments made by Fore Group and a journal entry transferring liability via a promissory note, that are not present and, therefore, have not been credited by Plaintiff's accounting.

TABLE 3 Reconciliation of Transfers from Fore Group (Credits)

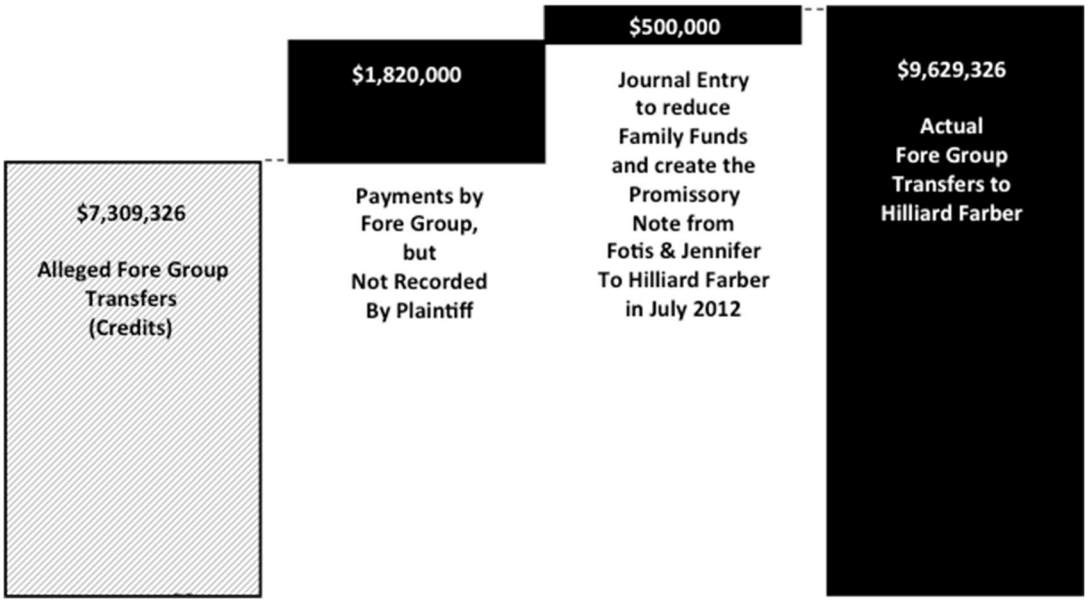


Table 3A shows the aggregate of the missed payments:

TABLE 3A

Amount	Date	Check #	Payable To	Date Cashed	Exhibit #
$ 670,000.00	11/6/09	2688, 2689, 2690	Hilliard Farber	11/12/09	G
$ 150,000.00	7/16/08	1285	Hilliard Farber	7/23/09	G
$ 500,000.00	9/16/06	1370	Hilliard Farber	9/20/09	G
$ 300,000.00	5/12/09	2052	Hilliard Farber	5/13/09	G
$ 200,000.00	6/22/09	2191	Hilliard Farber	6/23/09	G
$ 1,820,000.00					

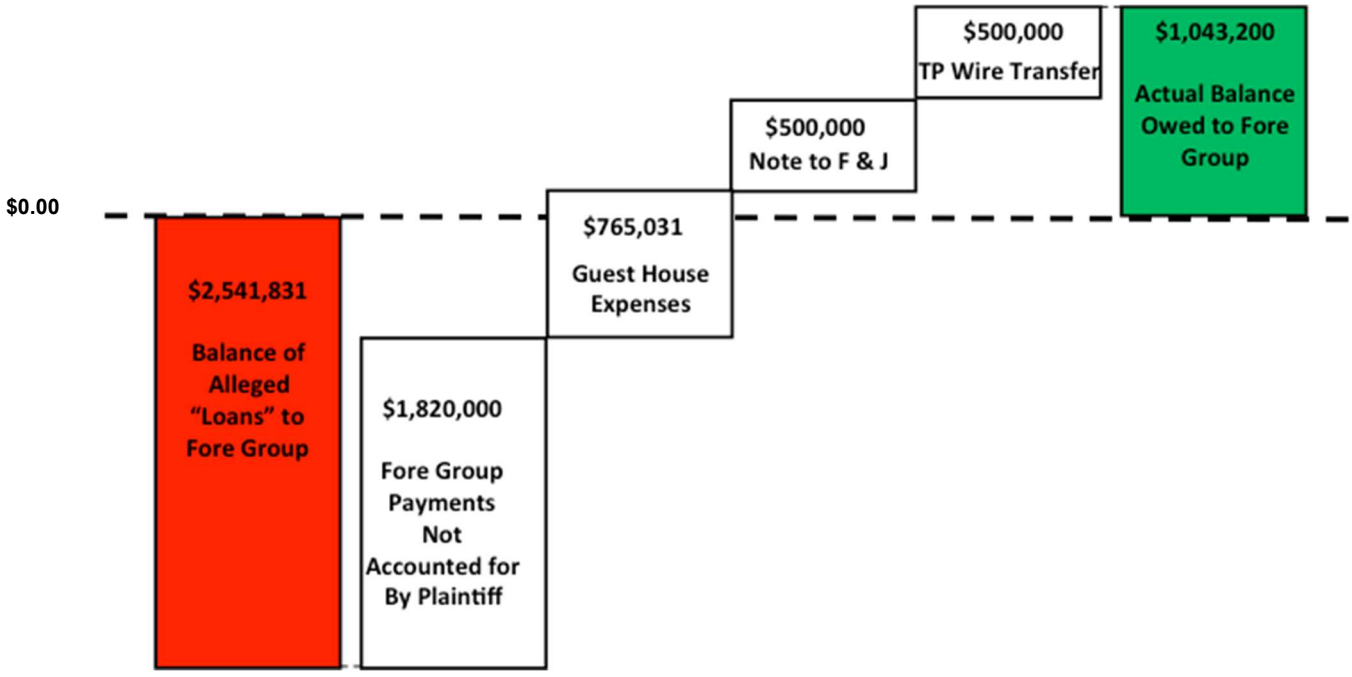
As presented at trial and summarized in Table 3A above, Plaintiff's accounting, upon which Plaintiff relies, omits five (5) payments made with seven (7) checks, representing advances made from Fore Group to Farber, which checks were negotiated by Farber. As these advances are not reflected by Plaintiff's spreadsheet (*Ex*. 6), the total amount of $1,820,000 should be added to the deposits by Fore Group ("Credits" on *Ex*. 6) and deducted from any claim for outstanding loans made by the plaintiff. *See*, *Ex.* G; *see also 12/3/2019 Tr.*, pg. 154: 20-169: 14.

Additionally, Plaintiff's accounting of the alleged loans omits the transfer of a $500,000 liability from Fore Group to Fotis and Jennifer Dulos in the form of the promissory note to Farber. As the evidence at trial has proven, on June 28, 2012, as the construction of 4 Jefferson Crossing was completed, Fotis and Jennifer Dulos signed a Promissory Note to Hilliard Farber for $500,000 (*Ex*. 4). These funds represented payment for construction expenses incurred by Fore Group on behalf of Fotis and Jennifer Dulos for the construction of their home at 4 Jefferson Crossing. Farber did not provide these funds at or around the time the Promissory Note was executed. Instead, Fore Group performed the work represented by the amount of the promissory note and the funds were deducted from amounts transferred by Farber to Fore Group previously (Family Funds account). A journal entry was entered in Fore Group's accounting, debiting the Family Funds account by $500,000 and crediting the Home Sales account by $500,000 to memorialize the

transaction. Since this transaction is not captured by Plaintiff's accounting (*Ex*. 6), the additional amount of $500,000 must be deducted from any amount Plaintiff claims Fore Group owes in Matter 970, because it was drawn from the Family Funds account already with Fore Group. The balance of this original amount is claimed to be due and owing by Plaintiff in Matter 971. *See 12/3/2019 Tr.,* pg. 171: 10-175: 6; *see also 12/4/2019 Tr.,* pg. 4: 15-6: 17.

In summary, the above discrepancies, if added, represent an amount of $3,585,031 in favor of Fore Group. If this amount is deducted from Plaintiff's claim of $2,541,831, the amount owed to Fore Group is $1,043,200 – see Table 4 below. The amounts due and owing to Fore Group are the subject of a counterclaim filed simultaneously herewith.

TABLE 4 – Summary Reconciliation of Balance (Alleged vs. Actual)



Plaintiff, in his second and third amended complaints, claimed that the amount owed to the Estate of Hilliard Farber is $2,541,831. This amount is shown and derived in Exhibit 6, by the Plaintiff's accountant, Rimma Gulub. Table 4 depicts this amount on the left (Balance of Alleged "Loans" to

Fore Group). The second, third, fourth, and fifth columns (from the left) depict the various discrepancies mentioned above, namely:

- the Fore Group payments which were not accounted for by the Plaintiff's accountant.
- the Guest House expenses, which were portrayed as "loans".
- the omission of the promissory note from Fotis and Jennifer Dulos to Farber.
- the wire transfer from Ioannis Toutziaridis, which was portrayed as a "loan".

Once these entries are taken into account the balance becomes $1,043,200, owed to Fore Group, if the exchanges of money between Farber and Fore Group are considered to be "loans".

B. Promissory Note - Matter 971

Dulos and his wife commissioned Fore Group in 2010 to construct their home at 4 Jefferson Crossing. A $500,000 note was signed by Dulos and his wife on June 28, 2012 in favor of Farber. *Ex.* 4. The funds were already with Fore Group and a journal entry was entered debiting the Family Funds account and crediting Home Sales, making Dulos and his wife personally responsible for the repayment of those funds to Farber. *See 12/3/2019 Tr.,* pg. 171: 10-175:6; *see also 12/4/2019 Tr.* at 4:15-6:17. Farber stated to Dulos and Jennifer that he and his wife, Gloria Farber, wanted to use the annual non-taxable gifts to reduce the balance of the loan over time. Moreover, he wanted the monthly payment of $1,250 to be deducted from principal. In essence, he was trying to make it as easy as possible for Dulos and Jennifer to repay the loan without incurring a tax liability for himself. Dulos testified:

> It was the agreement between the Farbers and Jennifer and I that the monthly -- the annual nontaxable maximum gift that they were giving us every year would be deducted from the principal. And that was what had been happening for the past five years. So I don't see why that should stop. And it was my understanding from the conversations we had that that was the purpose is to wipe out the note with the annual nontaxable gifts.

12/4/19 Tr., pg 11: 18-25. Dulos and his wife created a spreadsheet to track the monthly and

annual payments. In the spreadsheet, which was reviewed periodically by Farber, the annual non-taxable gifts were deducted from principal, as well as, the monthly $1,250 payments which came from Fotis and Jennifer's common account at Farmington Bank .

> Q Are there any other amounts according to your understanding from Mr. Farber that should be deducted from the principal being claimed by the plaintiff?
> A [Dulos]: The 1250 monthly payment should be deducted from the principal because that was our agreement.

12/4/19 Tr., pg 18: 9-13. It was the Defendant's understanding based on his discussions with Hilliard Farber shortly before his death that the annual non-taxable gift amounts would continue to be deducted from principal until the balance was paid off. After Hilliard Farber's passing in May of 2017, Jennifer circulated a communication via email to Defendant and Gloria Farber reiterating the above arrangement; namely that the annual gifts and $1,250 would continue to be deducted from principal.

> Q Did you have an understanding after Mr. Farber's death as to whether those gifts, those annual gifts, would continue to be deducted from the balance of the loan?
> A Yes.
> Q And where did that understanding come from?
> A From my conversations with Mr. Farber.
> Q Okay. And --
> A And Jennifer and Gloria Farber.

12/4/19 Tr., pg13: 4-11. In June of 2017, Jennifer filed for divorce and the couple ceased making the monthly payments as neither of them continued funding the common account. Based on the agreement between the parties and the track record of payments, the balance on June 2017 was $165,000. If the non-taxable gifts were to continue ($56,000 in 2017, $30,000 in 2018, $30,000 in 2019 and $30,000 for 2020) per the agreement and tax code, the balance becomes $19,000 by 2020 due to the missed monthly payments. If the obligation is treated as a joint liability, then this would be the maximum obligation due the Plaintiff as of 2020. Plaintiff's counsel acknowledges that Dulos' statement with regards to the treatment of the 500,000 promissory note is admissible, and

offered no evidence to contradict it. *12/4/2019 Tr.*, pg. 13: 26-27 & pg. 14: 1.

III. ARGUMENT.

A. Burden of Proof.

The claims asserted in Matter 970, are breach of contract (Count One), unjust enrichment (Count Two), and piercing of the corporate veil (Count Three).[4] The claim in Matter 971 is for breach of contract. *See Doc. 136.00.* All of the claims require that the plaintiff prove each and every element of his claim by a preponderance of the evidence. *See Freeman v. Alamo Management Co.,* 221 Conn. 674, 678, 607 A.2d 370 (1992); *see also Patel v. Patel,* Superior Court, judicial district of New Haven, Docket No. CV-12-6034651-S (August 26, 2016, Lager, J.) (burden of proof for unjust enrichment is preponderance of evidence standard). As is set forth below, the plaintiff has not proven his claims under the required standard of proof in either Matter 970 or 971.

B. Matter 970

1) Plaintiff Failed to Establish Breach of Contract

The elements of a breach of contract action are: (1) formation of an agreement; (2) performance by one of the parties to that agreement; (3) breach of a material term or terms of the agreement by another party; and (4) damages resulting from that breach. Seligson v. Brower, 109 Conn. App. 749, 753 (2008). This action is also subject to the applicable statute of limitations (*Conn. Gen. Stat.* §§ 52-576 & 52-581) as well as the Statute of Frauds (*Conn. Gen. Stat.* §52-550). Dulos maintains that there was no breach of any agreement. Rather, assuming *arguendo* that there was an agreement, it was fluid and evolved along with the relationship between Mr. Farber and Dulos.

[4] *See Footnote 2, infra.* Defendants treat the *Fourth Amended Complaint* as the operative pleading in Matter 970.

The dispositive issue in any contract dispute is the intent of the parties. If a purported contract is ambiguous, then construction of that contract is a question of fact. *O'Connor v. Waterbury*, 286 Conn. 732, 743 (2008). "In order for an enforceable contract to exist, the court must find that the parties' minds had truly met. . . . If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make." *Summerhill, LLC v. City of Meriden*, 162 Conn. App. 469, 474-75(2016) (ellipsis in original).

Here, putting aside the statute of limitation and statute of frauds issues discussed *infra*, the evidence of any agreement between Farber and Dulos is ambiguous at best. Because of this ambiguity the Court must look to the facts elicited at trial to determine the nature of the agreement. As is made clear in the facts section, *supra,* by the end of 2010, to the extent there was an agreement between the parties, it was a two way street in which neither party owed the other anything as a result of the funds flowing between them. Both parties benefited from this arrangement. As funds were needed to keep Fore Group growing, Farber advanced funds as needed. There were no promissory notes and advances were given with no expectation of repayment. When funds were not utilized for construction projects, Fore Group transferred excess funds to Farber. Money flowed both ways to the benefit of both parties.

2) The Statute of Limitations Bars any Loans Allegedly Made Prior to January 15, 2015

The evidence at trial proves that most of the alleged loans claimed by Plaintiff are barred by the applicable statute of limitations – *Conn. Gen. Stat.* § 52-576 or § 52-581. As a result, the balance of alleged loans being claimed by Plaintiff of $1,740,000 dating back to 2004 is time-barred.

The uncontroverted evidence at trial was that prior to the end of 2009, Farber advanced funds to Fore Group pursuant to a formal repayment relationship, for which initially there were promissory notes. The advances made by Farber were for particular projects of Fore Group. The advances were due and payable back to Farber upon completion of a particular project.

> Q When that relationship began were there promissory notes for the advancements?
> A [Dulos] Yes. The first years, from I believe 2004 to 2007 and '8 there were formal promissory notes. There was an interest rate and these notes were on the premise that when projects were completed the money would be returned to Mr. Farber.
> Q So to the extent that there were loan agreements between you and Mr. Farber, those were payable upon the completion of a particular project.
> ATTY. WEINSTEIN: I'm going to object if he's testifying about documents that aren't in evidence. I haven't seen those documents. They haven't been produced.
> THE COURT: He can testify about the documents. Overruled.
> THE WITNESS: Yes, that's correct.

12/3/19 Tr., pg. 84: 3-19. Plaintiff has admitted the same in his pleadings. See *Third Amended Complaint*, September 11, 2019, ¶ 8 (Doc. 205.00) ("Upon the re-sales of the properties, the defendant Fore Group repaid the decedent funds that the decedent had loaned the Defendant."). Dulos' uncontroverted testimony is that the projects against which Farber loaned monies were all completed by the end of 2006.

> Q But with respect to everything from November 2004 through March of 2006, those were monies that were advanced that were expected to be repaid upon the completion of a particular project.
> A Correct.
> Q All right. And when was the date by which all of those projects were completed?
> A By the end of 2006.
> Q The end of 2006?
> A Yes.
> Q So all of those funds that advanced prior to that were due and payable upon the completion of that last project at the latest.
> A Correct.

12/3/19 Tr., pg.86: 15-27 & 87: 1. Plaintiff has not offered any promissory notes or writings signed by Fore Group that evidence those loans or that the terms were different than what Dulos testified to at trial.

Conn. Gen. Stat. § 52-576 states, in pertinent part: "(a) No action for an account, or on any simple or implied contract, or on any contract in writing, shall be brought but within six years after the right of action accrues, except as provided in subsection (b) of this section [mental incompetence]." *Conn. Gen. Stat.* 52-581, in turn, states: "No action founded upon any express contract or agreement which is not reduced to writing, or of which some note or memorandum is not made in writing and signed by the party to be charged therewith or his agent, shall be brought but within three years after the right of action accrues."

Since no writings have been produced by Plaintiff, to the extent that any portion of his claim relates to alleged loans made prior to the end of 2009, they are clearly time-barred by the aforementioned statutes of limitations. As none of the alleged loans were reduced to a writing by Dulos and Matter 970 was commenced on January 26, 2018, any alleged loan Plaintiff claims before January 26, 2015 is time-barred.

3) The Statute of Frauds Bars the Alleged Loans

In this case, the Statute of Frauds bars the claims asserted by Plaintiff, because alleged loans by Farber to Fore Group exceed $50,000 and there is no writing memorializing the alleged loan agreements. The Plaintiff did not refute the non-existence of written loan agreements in Matter 970. The evidence at trial shows that Plaintiff does not possess any such writing. The Plaintiff's "accounting" is riddled with inconsistencies and inaccuracies, as is discussed above in detail. The evidence shows that the Plaintiff seeks to collect monies that are not loans, on funds that have been paid in excess of principal.

Connecticut's Statute of Frauds is set forth in *Conn. Gen. Stat.* § 52-550. It reads, in pertinent part, as follows:

> a) No civil action may be maintained in the following cases unless the agreement, or a memorandum of the agreement, is made in writing and signed by the party, or

> the agent of the party, to be charged: . . . (6) upon any agreement for a loan in an amount which exceeds fifty thousand dollars.

Conn. Gen. Stat. 52-550(a)(6). Here, prior to trial, Plaintiff sought approximately $2.5 million from Defendants. However, that amount was quickly reduced during the direct examination of the plaintiff to approximately $1.7 million based on admitted mistakes in Plaintiff's accounting of what may or may not constitute a loan. Throughout the trial, Defendants challenged the credibility and accuracy of Plaintiff's claims, and showed that the loan amounts claimed were not accurate and that, in fact, if the exchanges of money between the parties are to be considered loans at all, it is Defendants who are owed money from Plaintiff.

To the extent that Plaintiff will claim equitable estoppel, also known as the doctrine of part performance, bars Defendants from asserting the Statute of Frauds as a defense, the law and record in this case do not support this conclusion. The Connecticut Supreme Court "previously has applied the doctrine of equitable estoppel to bar a party from asserting the statute of frauds as a defense so as to prevent the use of the statute itself from accomplishing a fraud." *Glazer v. Dress Barn, Inc*., 274 Conn. 33, 60 (2005). In that case, the Supreme Court outlined the elements required for part performance to prevent a party from invoking the Statute of Frauds: "(1) statements, acts or omissions that lead a party to act to his detriment in reliance on the contract; (2) knowledge or assent to the party's actions in reliance on the contract; and (3) acts that unmistakably point to the contract." Id. at 62. On the third element, the Court required that,

> the acts of part performance . . . be of such a character that they can be naturally and reasonably accounted for in *no other way* than by the existence of some contract in relation to the subject matter in dispute. . . [i]f the acts are reasonably explicable on some other ground . . . they are not sufficient to take the case out of the statute of frauds.

Id., at 67.

Here, Plaintiff seems to claim that the financial history between Dulos and Farber evidences an agreement to provide a revolving line of credit to Fore Group subject to repayment. However, the payments detailed in Exhibit 25 demonstrate a change in the nature of that relationship. Between 2005 and 2010, interest payments by Fore Group to Farber averaged approximately $62,000.00 per annum. However, between 2011 and 2016 payments by Fore Group to Farber averaged approximately $6,835.00 per annum. This change, and the lack of any objection by Farber, demonstrate that there was no contract with fixed terms. Rather, this change is circumstantial evidence of an alternative explanation – that from 2011 onward money flowed both ways between Fore Group and Farber. As funds were needed to keep Fore Group growing, Farber advanced funds. There were no promissory notes, and the advances were given with no expectation of repayment. When funds were not utilized for construction projects, Fore Group transferred excess funds to Farber. Accordingly, because the acts Plaintiff would rely on in an attempt to show partial performance are susceptible to an alternative and more plausible explanation, they are insufficient to defeat any Statute of Frauds defense.

And, this is the very reason that the Statute of Frauds exists – to protect parties from claims of fraudulent loans. In this case, the amount of the loans being claimed far exceeds $50,000, and there are no writings memorializing those loans. As a result, Plaintiff's claims relating to the alleged loans should be rejected, and judgment should enter in favor of Defendants with respect to any and all amounts claimed to be due and owing by the Fore Group to Plaintiff.

4) To the Extent There Were Any Loans, They Have Been Repaid

To the extent Plaintiff seeks to recover for alleged loans from 2004 to the present, the uncontroverted evidence provided at trial shows that any such monies have been repaid. In fact, the monies have been repaid in excess. Monies flowed freely between Fore Group and Farber

without formal loan agreements after 2009. The net funds established at trial for payments between Farber and Fore Group shows an amount of over $1 million in Fore Group's favor. The equitable claims made by the Plaintiff lack evidence. Fore Group paid Farber more than Farber paid Fore Group.

5) Plaintiff Failed to Establish Unjust Enrichment

To establish a claim of unjust enrichment, a plaintiff must prove: (1) The defendant received a benefit from the plaintiff; (2) for which the defendant unjustly did not pay; and (3) the defendant's failure to pay for that benefit was to the plaintiff's detriment. *Weisman v. Kaspar*, 233 Conn. 531, 550 (1995). Unjust enrichment is a common-law principle of restitution that permits recovery in the absence of a valid contract between the parties. *See Marlin Broadcasting, LLC v. Law Office of Kent Avery, LLC*, 101 Conn. App. 638, 648 (2007). Because unjust enrichment is an equitable remedy, the existence of an adequate legal remedy for the same conduct—such as breach of contract—will bar an unjust enrichment claim. *See Russell v. Russell*, 91 Conn. App. 619, 637, *cert. denied*, 276 Conn. 924 (2005). Whether a defendant has unjustly enriched itself ordinarily is a question of fact on which a trial court has wide latitude. *See Horner v. Bagnell*, 324 Conn. 695, 708 (2017) ("we ordinarily engage in a deferential review of the trial court's conclusion that the defendant was unjustly enriched"). As set forth above in detail, there can be no unjust enrichment, because Fore Group paid Farber more than Farber paid Fore Group.

6) The Plaintiff's Unjust Enrichment Claim Is Barred By Laches

As a preliminary matter, there is no governing statute of limitations for unjust enrichment. Some Connecticut courts have held that because unjust enrichment is a "quasi-contract" action, the limitations period corresponds to the analogous statute of limitations period. *See Reclaimant Corp. v. Deutsch*, 332 Conn. 590, 613-14 (2019). However, other courts have refused to apply any

limitations period because of unjust enrichment's equitable character. *Id*. Rather those courts look to the equitable doctrine of laches. *Id*. In *Reclaimant Corp. v. Deutsch*, the Connecticut Supreme Court held "unjust enrichment claims are not barred by the three-year limitation period in § 52-577." *Id*., 332 Conn. at 614. Rather, the Court reasoned, "in an equitable proceeding, a court may provide a remedy even though the governing statute of limitations has expired, *just as it has discretion to dismiss for laches an action initiated within the period of the statute*." (Emphasis added.) *Id*., 332 Conn. at 613.

"To prevail on the affirmative defense of laches, the defendants must establish, first, that there was an inexcusable delay and, second, that the delay "prejudiced the defendant[s]. . . . The mere lapse of time does not constitute laches . . . unless it results in prejudice to the defendant[s] . . . . A conclusion that a plaintiff has been guilty of laches is one of fact for the trier." *Id*., 332 Conn. at 614.

Here, there is inexcusable delay that prejudiced Dulos. Farber died on January 8, 2017 following a battle with a terminal illness. His death was not sudden or unexpected. Additionally, the Dulos' marriage did not suddenly break down upon his death. Rather, like many relationships, the Dulos' uncoupling was gradual. During the course of the marital breakdown all parties were aware of their mutual financial history, including how it evolved over time into a mutually beneficial two way street in which neither party owed the other anything as a result of the funds flowing between them. However, rather than addressing his issue while Farber was alive, Plaintiff chose to wait until after Farber's death to bring this claim. In fact, Plaintiff brought the claim almost a year after Farber's death and months after her daughter had filed for divorce,. This was part of a concerted plan to drain Dulos of funds, tarnish his reputation and ultimately restrict his access to his five children.

Given that Matter 970 was commenced on January 26, 2018 and that plaintiffs' claims stretch back to 2004, it is clear there was inexcusable delay. It is equally clear that this inexcusable delay prejudiced Dulos. Had Plaintiff brought this action while Farber were still alive, his deposition would have preserved his understanding of the nature of any alleged agreement he had with Dulos. However, Plaintiff did not elect this course. Based on the evidence elicited at trial, it is not clear whether Plaintiff could have raised these claims while Farber was able to testify.

It is within this court's discretion to find Plaintiff's unjust enrichment claim barred by latches. Given that Plaintiff was aware of the evolving nature of the relationship between Dulos and Farber, but elected to wait to bring this claim until after Farber died, this Court should find Plaintiff's unjust enrichment claim barred by latches.

7. Assuming Arguendo The Court Does Not Find The Claim Barred By Laches, The Plaintiff Cannot Establish The Second and Third Elements of Unjust Enrichment.

The crux of an unjust enrichment claim is that "in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another." *Meaney v. Connecticut Hosp. Ass'n, Inc*., 250 Conn. 500, 511 (1999). However, the "broad and flexible" nature of this remedy lends itself to abuse. *See Id*. As a result, a court must examine the circumstances and conduct of the parties in a given situation to determine a just result. *Id*. This is a "highly fact-intensive inquiry. . . ." *Gagne v. Vaccaro*, 255 Conn. 390, 409 (2001). The enrichment does not have to be intentional; a benefit conferred on a defendant due to an error may support a claim for unjust enrichment. *See Hospital of Central Connecticut v. Neurosurgical Assocs., P.C.*, 139 Conn. App. 778, 788(2012) (genuine issue of material fact whether defendant was unjustly enriched due to erroneous "payments to the defendant totaling $66,666.64 following the termination of the parties' contract").

In general, however, "for the benefit to be unjust, the defendant must have solicited it." *Levinson v. Lawrence*, 162 Conn. App. 548, 559 (2016). Nonetheless, it must be unjust for the defendant to retain the benefit and not merely detrimental for the plaintiff to have conferred it. *See Town of Stratford v. Wilson*, 151 Conn. App. 39, 50, *cert. denied*, 314 Conn. 911 (2014) (assuming arguendo that former employee's "'cash-out' was a detriment to the town, the town's claim on appeal founders because the town failed to prove that the defendant was unjustly benefited").

Here, Plaintiff's unjust enrichment claims fails for the same reason as the breach of contract claim. As is made clear in the facts section, *supra*, by the end of 2010, to the extent there was an agreement between the parties, it was a two way street in which neither party owed the other anything as a result of the funds flowing between them. Both parties benefited from this arrangement. As funds were needed to keep Fore Group growing, Farber advanced funds as needed. There were no promissory notes, and advances were given with no expectation of repayment. When funds were not utilized for construction projects, Fore Group transferred excess funds to Farber. Money flowed both ways to the benefit of both Farber and Dulos; they were family. Accordingly, because it is undisputed that both parties benefited from this flow of funds Plaintiff cannot establish the second and third elements. As to the second element, that Dulos did not pay for the benefit received, the evidence elicited at trial demonstrates that Dulos "paid" for any benefit he received several times over. As to the third element, that somehow the flow of money between the parties was to the detriment of Mr. Farber, there is no evidence in the record to support this conclusion.

8) Plaintiff Cannot Pierce the Corporate Veil

The doctrine of piercing the corporate veil is equitable in nature, and courts ordinarily will do so only under exceptional circumstances. *Angelo Tomasso, Inc. v. Armor Constr. & Paving*,

Inc., 187 Conn. 544, 557 (1982); *see also Naples v. Keystone Bldg. & Dev. Corp.*, 295 Conn. 214, 233 (2010) ("[C]ourts decline to pierce the veil of even the closest of corporations in the absence of proof that failure to do so will perpetrate a fraud or other injustice."). While there exists no bright line rule identifying what exceptional circumstances would warrant veil piercing,

> [t]he improper use of the corporate form is the key to the inquiry, as 'it is true that courts will disregard legal fictions, including that of a separate corporate entity, when they are used for fraudulent or illegal purposes. Unless something of the kind is proven, however, to do so is to act in opposition to the public policy of the state as expressed in legislation concerning the formation and regulation of corporations.'

Naples, 295 Conn. at 233-34 (quoting *Angelo*, 187 Conn. at 559). Accordingly, Connecticut courts pierce the corporate veil only where the "corporation is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetrate fraud or promote injustice." *Naples*, 295 Conn. at 232 (quoting *Angelo*, 187 Conn. at 557*); see also Datto, Inc. v. Braband*, 856 F. Supp. 2d 354, 384-85 (D. Conn. 2012) (discussing that the remedy of piercing the corporate veil "is restricted to extraordinary circumstances, when there is sufficient basis for a claim of breach of fiduciary duty based on *fraudulent acts of individuals who occupy a fiduciary relationship*, such as usurping a corporate opportunity, misappropriating corporate funds, failing to disclose information about the misappropriation of corporate funds, or looting the corporation to deprive the minority shareholder of the value of his assets") (emphasis in original) (internal quotation marks omitted).

A plaintiff who seeks to pierce the corporate veil to impose individual liability on a corporate officer must do so under either the instrumentality or the identity theories of liability. *Naples*, 295 Conn. at 232; quoting *Angelo*, 187 Conn. at 553-54. Here, Plaintiff's claim to pierce the corporate veil and impose liability on Dulos, personally, fails under either theory.

First, the Plaintiff has not born his burden of establishing liability of Fore Group. Therefore, the claim that Fore Group's corporate veil should be pierced is moot. Every attempt

that the Plaintiff has made to show that Dulos utilized company funds for personal reasons has been rebutted. The Plaintiff has not introduced any evidence that the Defendant comingled company and personal funds. Dulos' testimony shows meticulous separation between his expenses and Fore Group. The few items that the plaintiff tried to use – reimbursed payments to three vendors, travel costs, and babysitting expenses – were refuted by Dulos.

i. Under the Instrumentality Rule Plaintiff Cannot Show That Dulos' Control of the Fore Group Caused Any Injury To the Plaintiff or Violated Plaintiff's Legal Rights.

To pierce the corporate veil under the instrumentality rule, a plaintiff must prove these elements:

> (1) control, but not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the] plaintiff's legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Sturm v. Harb Dev., 298 Conn. 124, 132 n.7 (2010) (quoting *Angelo*, 187 Conn. at 553); *Naples*, 295 Conn. at 232; *Zaist v. Olson*, 154 Conn. 563, 576 (1967). Courts look to a wide range of factors to determine whether an entity is dominated or controlled, including the absence of corporate formalities, inadequate capitalization, whether funds are transferred in and out of the corporation for personal rather than for corporate purposes, and overlap in ownership, officers, directors, and personnel. *Naples*, 295 Conn. at 232 (quoting *Litchfield Asset Mgmt. Corp. v. Howell*, 70 Conn. App. 133, 152-53 (2002), overruled on other grounds by *Robinson v. Coughlin*, 266 Conn. 1, 9 (2003)).

Under the instrumentality rule, Dulos clearly had "control" of the Fore Group. However, at no time did Dulos use this "control" to commit fraud or to perpetuate the violation of a statute or

other duty. Simply put, Dulos did not breach his duty, and no damage flowed to the Plaintiff. The limited evidence raised by Plaintiff in an attempt to establish liability – reimbursed payments to three vendors, travel costs, and babysitting expenses – are discussed at length *infra*.

ii. Under the Identity Rule Plaintiff Cannot Show Liability by the Fore Group or a Sufficient Unity of Interest between Dulos' and The Fore Group to Justify Piercing The Corporate Veil.

Alternatively, the Plaintiff can prevail in piercing the veil if it can prove that Fore Group ceased having its own identity. Imposition of individual liability under the identity rule is characterized as follows:

> [i]f the plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise.

Sturm, 298 Conn. at 132 n.7 (quoting *Angelo*, 187 Conn. at 554); *Naples*, 295 Conn. at 232; *Zaist*, 154 Conn. at 576. The key factor in determining whether the corporate entity should be disregarded under the identity rule, also referred to as the "alter ego" rule, is the degree of the defendant's control or influence over the corporation. *Angelo*, 187 Conn. at 560 n.10*; United Elec. Contractors, Inc. v. Progress Builders, Inc.*, 26 Conn. App. 749, 756 (1992). "There must be such domination of finances, policies, and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own and is but a business conduit for its principal." *Litchfield*, 70 Conn. App. at 156, *overruled on other grounds by Robinson*, 266 Conn. at 9 (internal quotation marks omitted).

In sum, Connecticut courts rely on the identity rule to pierce the corporate veil "when the statutory privilege of doing business in the corporate form... is employed as a cloak for the evasion of obligations, as a mask behind which to do injustice, or invoked to subvert equity, [in these

situations] the separate personality of the corporation will be disregarded." *Cadle Co. v. Zubretsky*, Superior Court, judicial district of Hartford, Docket No. CV 04 0832477 (January 30, 2008, Hale, J.T.R.) (44 Conn. L. Rptr. 843, 844) (internal quotation marks omitted). For example, in *Davenport v. Quinn,* the court stated that:

> Utilizing the identity rule, [the court] concludes that the evidence compels the conclusion that [Quinn] was, at all relevant times, the 'alter ego' of all of his enterprises. The relative lack of formalities observed, the failure to completely document various transactions, the free use by the entities and [Quinn] to make 'officer's loans,' loans and pay various debts, and the payments to himself of large salaries after the claim arose, as well as other evidence make it clear that there was such a unity of interest and ownership that the independence of the corporation, if it indeed ever existed, ceased to exist.

53 Conn.App. 282, 301-02, 730 A.2d 1184 (1999).

In the present case, the evidence does not prove that there was a unity of interest and ownership so as to defeat the independence of Fore Group. Under the identity rule, at all times the Fore Group remained independent of Dulos. Dulos' testimony, which was uncontroverted, proves that Fore Group never ceased acting with the necessary corporate formalities. There was never a domination of finances by Dulos to the detriment of Fore Group. The limited evidence raised by Plaintiff in an attempt to establish liability – reimbursed payments to three vendors, travel costs, and babysitting expenses – are discussed at length *infra*. However, that these examples are all the Plaintiffs could muster in their attempt to pierce the corporate veil speaks volumes and distinguishes the instant case from *Davenport*.

9) The Evidence Elicited by the Plaintiff at Trial was Insufficient to Pierce the Corporate Veil Under Either the Instrumentality or Identity Rule

i. Contractor Expense Reimbursements

The Plaintiff introduced evidence that purportedly proved that Dulos overpaid himself for expenses incurred on behalf of Fore Group. Dulos proved that Plaintiff's summary accounting was incorrect and did not reflect credits and payments. With respect to Rings End, Defendants proved

through testimony and credit card statements that the alleged "overpayment" to Dulos was wrong. *See 12/4/19* Tr., pg 19: 22-27: 4; *Ex.* AA; & *Ex*. 19. With respect to S.K. Lavery, the defendants showed that the claimed excess reimbursement made by Fore Group to Dulos was paid back by Dulos to the company by check in January of 2019. *See 12/4/19 Tr.* 27: 5-28:14; *Ex.*BB. Regarding the reimbursed charges to American Overhead Door, the defendants, likewise, proved that Plaintiff's accounting missed a number of items and that the amounts reimbursed to Dulos by Fore Group matched up with the amounts he paid to that company in the first place. *See 12/4/19 Tr.*, pg. 31: 2-33: 22; *Ex.* CC; *Ex.* 19. Thus, any argument that Mr. Dulos paid company expenses and then reimbursed himself for those expenses in excess to funnel off money from the Fore Group, Inc. for personal use fails.

ii. Travel Expenses

As Fore Group began to develop into a recognized industry leader in the construction of high-end homes, Dulos determined that it was prudent to expand its potential sources of capital. One of the initial overtures were made to a wealthy friend of Dulos, Ioannis Toutziaridis. Dulos began to meet with Ioannis Toutziaridis and continued to meet with him about investing in Fore Group. Toutziaridis and Dulos met in Florida. As a result, of these efforts, Toutziaridis invested $500,000 into Fore Group. In addition, Dulos reached out to Mark Masiello, who was a very accomplished water skier and business person. Dulos and Masiello began to spend significant time together. Dulos went on these trips with a dual purpose. Spend time with a friend and secure funding for Fore Group. As a result of these efforts, Masiello invested $600,000. The idea that these trips did not serve a legitimate business purpose ignores $1,100,000 of investment into Fore Group.

On all trips with Mark Masiello and Ioannis Toutziaridis their significant others were present. At that time, Dulos was involved with Michelle Troconis. She accompanied Dulos so as to make the business trip have a personal and connected feeling for all parties. Dulos did not cause Fore Group to pay for Troconis' travel during any of these trips. *12/4/2019 Tr.*, pg. 53 :1-61: 13. Dulos testified in detail about travel expenses and rebutted all claims raised by Plaintiff. *12/4/2019 Tr.*, pg. 66: 5-73:15.

iii. Lauren Almeida

The Plaintiff also claims that the Defendants relationship with Almeida supports a piercing of the Fore Group corporate veil. Almeida performed two functions for the Defendants. First, Almeida assisted Fotis and Jennifer Dulos in taking care of the couple's children. These payments were made by Jennifer to Lauren and are reflected in Exhibit Y, and *12/4/19 Tr.*, pg 44: 1-19. In addition, Dulos testified that both he and Jennifer occasionally paid Almeida with cash for babysitting. *12/4/19 Tr.*, pg. 48: 24-27 & 49: 1-22. Almeida had a Bachelor degree from the University of Connecticut and expressed her desire to take on added responsibilities. Dulos appreciated the kindness she showed their children. He offered her an entry position with Fore Group, so she could meet her financial obligations. She performed clerical work for Fore Group including invoice processing and simple punch list work. In consideration for these services, she was paid a $31,200 salary by Fore Group. There was no comingling of the family and business relationship with Lauren Almeida.

In sum, the Plaintiff presented no evidence of any exceptional circumstances that warrant veil piercing. At best, Plaintiff establishes that Dulos was in control of the Fore Group. As a matter of law, this is insufficient under either the instrumentality or identity rule. Rather, given the Plaintiff's failure to even attempt to establish the facts necessary to pierce the veil, it appears that

the Plaintiff's actual goal in raising this claim was to place before the court, and most likely before the media, the fact that on a few occasions while Dulos travelled for legitimate business purposes he was accompanied by Michelle Troconis. Accordingly, the Court should find that the Plaintiff failed to establish the elements necessary to pierce the corporate veil under either rule.

C. Matter 971

As is discussed above, the evidence at trial establishes that any amounts claimed to be due and owing by Dulos and his wife under the promissory note at issue in Matter 971 were to be satisfied through gifts by the Farbers to them on an annual basis. Therefore, there should be no amounts due and owing under that promissory note.

D. Counterclaims

Fore Group has simultaneously herewith asserted counterclaims for unjust enrichment and breach of contract. The evidence provided at trial shows that, to the extent the Court determines that the exchange of money between Farber and Fore Group are loans or unjustly enriched one party or another, the balance of the exchanges was in favor of Fore Group. Defendants have showed that in two different ways; first, by starting with the alleged loan balance in the 2016 Tax Return ($1,740,000) and subtracting the misclassified payments; and second, by taking the Plaintiff's accounting of an alleged balance of $2,541,831 and adding the omitted entries. Both methods end up with the same number: $1,043,200 due to Fore Group from Farber. As a result, the Court should not only enter judgment in favor of Defendants with respect to Plaintiff's claims, but also enter judgment in favor of Fore Group with respect to its counterclaims.

IV. CONCLUSION

The Plaintiff sought an application for pre-judgment remedy in the amount of approximately $2,000,000. *Matter 970* (Doc. 109.00). After testimony before the Honorary Judge

Shah, the Court found that probable cause only existed for the issuance of $500,000 attachment. Attorney Schmitt, the plaintiff at the time, acknowledged that, at most, only $500,000 was due the Estate of Hilliard Farber. At the time of the hearing, Farber was deceased and no additional tangible evidence was going to be available to the Court in the future. In fact, no additional relevant documentation was produced at the trial of Matter 970 that was not produced at the PJR hearing. Since that time, Fore Group has had an opportunity to investigate the alleged loans, and has provided evidence showing that, under any standard, there are no monies due and owing to Farber by the Fore Group. Even the $500,000 awarded as the prejudgment remedy has been completely disproven. No new material evidence was presented by Plaintiff to support his claims.

Defendants request that the Court respect its prior ruling and modify it, so as to take into account additional payments and credits not introduced at the PJR hearing before the Honorary Judge Shah. The Honorary Judge Shah was presented with Fore Group's tax returns, which reflected alleged "loans" of $1,740,000 as of 2016. However, the Court recognized that the tax returns were merely secondary evidence and not primary evidence of the true amount due the Plaintiff, by the Defendants. Testimony, cancelled checks, wire transfers and payments for the Guest House construction expenses prove that no funds are due the Plaintiff, and, in fact, it is Plaintiff that owes Fore Group money. Defendants request that the Court enter judgment in their favor on all of Plaintiff's claims and enter judgment in Fore Group's favor with respect to its counterclaims for the amount it paid to Farber that exceeds what Farber paid to it. That is what equity and justice require, and it is high time that those principles are applied in these matters.

DEFENDANTS,
FOTIS DULOS AND FORE GROUP, INC.

BY_____

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CERTIFICATION OF SERVICE

This shall certify that a copy of the foregoing was served on this 19th day of December, 2019 on the following:

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